

FILED  
U.S. DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

2004 JAN 23 A 11:55

**BRYAN K. BARTLETT and ELIZABETH  
BARTLETT, Individually and as Mother  
and Next Friend of ANGELA L. BARTLETT,  
BRYAN K. BARTLETT, JR. AND,  
CHRISTOPHER C. BARTLETT**  
**Plaintiffs**

v.

**DANIEL O'CONNELL'S SONS, INC.,**  
**Defendant**

U.S. DISTRICT COURT  
DISTRICT OF MASS.

**CIVIL ACTION NO:03-12349PBS**

**MOTION OF THE PLAINTIFFS (WITH MEMORANDUM OF REASONS)**  
**FOR ENTRY OF DEFAULT AND DEFAULT JUDGMENT**

**NOW COME** the plaintiffs, Bryan K. Bartlett, et al., who respectfully move the Court pursuant to Fed. R. Civ. P. 55(a) for entry of default and pursuant to Fed. R. Civ. P. 55(b)(2) for entry of default judgment against the defendant, Daniel O'Connell's Sons, Inc. As grounds therefor, the plaintiffs state as follows:

1. On December 1, 2003, the plaintiffs caused the Summons and Complaint to be served in hand upon Philip Torrey, the Clerk of the defendant corporation, at his address on file with the Massachusetts Secretary of State, 1450 East Street, Amherst, MA 01002. (Exhibit A – Summons with Declaration of Server).
2. Under Fed. R. Civ. P. 12(a)(1)(A) the defendant was required to respond to the Complaint within 20 days after being served with the Summons and Complaint, the twentieth day after service upon the defendant herein was December 22, 2003. (Exhibit B - Pacer Docket Sheet).

3. To date, the defendant has not responded to the Complaint, nor has any attorney entered an appearance on its behalf, nor has the defendant, nor any lawyer representing it, contacted plaintiffs' counsel to request additional time in which to respond to the Complaint.

4. The defendant is not an infant or incompetent person.

5. In their Complaint, the plaintiffs have requested damages for personal injuries sustained by Bryan Bartlett on December 27, 2000 as a direct result of the defendant's negligence.

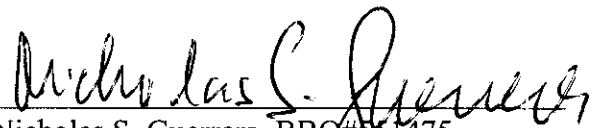
6. Pursuant to Fed. R. Civ. P. 55(b)(2) the plaintiffs respectfully request that the Court conduct such hearings as it deems necessary to effectuate a default judgment in their favor.

**WHEREFORE**, the plaintiffs pray that their motion be granted.

Respectfully submitted,

The Plaintiffs, BRYAN K. BARTLETT, et al

By their Attorneys,

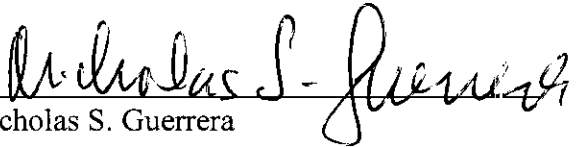
  
Nicholas S. Guerrero, BBO#351475  
Shaheen Guerrero & O'Leary, LLC  
Jefferson Office Park  
820A Turnpike Street  
North Andover, MA 01845  
(978)689-0800

Dated: January 21, 2003

**CERTIFICATE PURSUANT TO LOCAL RULE 7.1(A)(2)**

No attorney has appeared on behalf of the defendant. It was impossible to confer with opposing counsel in a good faith attempt to narrow the issue presented. A copy of the Motion of the Plaintiffs for Entry of Default and Default Judgment has been mailed this day to the defendant at 1450 East Street,

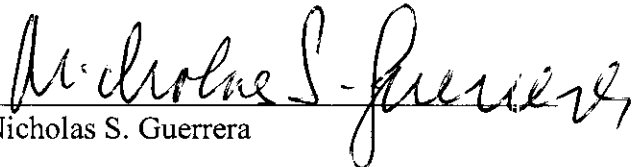
Amherst, MA 01002

  
Nicholas S. Guerrero

**AFFIDAVIT OF COUNSEL IN SUPPORT OF MOTION**

Nicholas S. Guerrero, counsel for the plaintiffs, upon his oath, hereby verifies that the facts set forth in the above Motion of the Plaintiffs for Entry of Default and Default Judgment are true of his personal knowledge and that the document attached hereto as Exhibit A is a true and accurate copy of the Summons and Return of Service and that the document attached hereto as Exhibit B is a true and accurate copy of the Pacer docket for the present action.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 21<sup>ST</sup> DAY OF  
JANUARY 2004.

  
Nicholas S. Guerrero

Dated: January 21, 2004

Exhibit A

AO 440 (Rev. 10/93) Summons in a Civil Action

**United States District Court**

FILED  
IN CLERKS OFFICE  
FILED 2004 JAN 23 A 11:55  
IN CLERKS OFFICE

Bryan K. Bartlett, et al.

v.

Daniel O'Connell Sons, Inc.

U.S. DISTRICT COURT  
DISTRICT OF MASS.  
2003 DEC -5

**SUMMONS IN A CIVIL CASE**

U.S. DISTRICT COURT  
DISTRICT OF MASS.  
CASE NUMBER:

US-12349-PBS

TO: (Name and address of defendant)

Daniel O'Connell Sons, Inc.  
480 Hampden Street  
Holyoke, MA 01040

**YOU ARE HEREBY SUMMONED** and required to serve upon PLAINTIFF'S ATTORNEY (name and address):

Shaheen Guerrera & O'Leary  
Jefferson Office Park  
820A Turnpike Street  
North Andover, MA 01845

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

TONY ANASTAS

CLERK

(BY) DEPUTY CLERK

DATE

November 21, 2003

AO 440 (Rev. 10/93) Summons in a Civil Action

**RETURN OF SERVICE**

Service of the Summons and Complaint was made by mail

DATE

NAME



**Office of the Sheriff** • P.O. Box 684 • Northampton, MA 01061 • 585-0618  
**Hampshire, ss.**

December 2, 2003

I hereby certify and return that on 12/1/2003 at 05:45 pm I served a true and attested copy of the SUMMONS, COMPLAINT AND CIVIL COVER SHEET in this action in the following manner: To wit, by delivering in hand to PHILIP TORREY, CLERK FOR DANIEL O'CONNELL SONS, INC. at 1450 SOUTH EAST STREET, AMHERST, MA 01002. In the service hereof, it was necessary and I actually used a motor vehicle 22 miles. Basic Service in hand (\$30.00), Conveyance (\$3.30), Travel (\$13.44), Copies (\$2.00), Attest (\$5.00) Total Charges \$53.74

Deputy Sheriff MILES A. SEAVER

*Miles A. Seaver*  
 Deputy Sheriff



Other (specify):

**STATEMENT OF SERVICE FEES**

TRAVEL

SERVICES

TOTAL

**DECLARATION OF SERVER**

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on

Date

Signature of Server

Address of Server

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

Exhibit B

United States District Court  
District of Massachusetts (Boston)  
CIVIL DOCKET FOR CASE #: 1:03-cv-12349-PBS

Bartlett et al v. Daniel O'Connell's Sons, Inc.  
Assigned to: Judge Patti B. Saris  
Referred to:  
Demand: \$  
Lead Docket: None  
Related Cases: None  
Case in other court: None  
Cause: 28:1332 Diversity-Personal Injury

Date Filed: 11/21/03  
Jury Demand: Plaintiff  
Nature of Suit: 360 P.L.: Other  
Jurisdiction: Diversity

**Plaintiff**  
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**Brayn K. Bartlett**

represented by **Nicholas S. Guerrero**  
Shaheen Guerrero & O'Leary, LLC  
Jefferson Office Park  
820A Turnpike Street  
North Andover, MA 01845  
978-689-0800  
Fax : 978-794-0890  
Email: nguerrera@sgolawoffice.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Elizabeth Bartlett, Individually, and  
as Mother and Next Friend Angela L.  
Bartlett**

represented by **Nicholas S. Guerrero**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Bryan K. Bartlett, Jr.**

represented by **Nicholas S. Guerrero**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Christopher C. Bartlett**

represented by **Nicholas S. Guerrero**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

V.

**Defendant**  
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**Daniel O'Connell's Sons, Inc.**

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Filing Date	#	Docket Text
11/21/2003	<u>1</u>	COMPLAINT against Daniel O'Connell's Sons, Inc. Filing fee: \$ 150, receipt number 51925, filed by Brayn K. Bartlett, Bryan K. Bartlett Jr., Christopher C. Bartlett, Elizabeth Bartlett.(Simeone, Maria) (Entered: 11/24/2003)
11/21/2003		Summons Issued as to Daniel O'Connell's Sons, Inc.. (Simeone, Maria) (Entered: 11/24/2003)
11/21/2003		If the trial Judge issues an Order of Reference of any matter in this case to a Magistrate Judge, the matter will be transmitted to Magistrate Judge Bowler. (Simeone, Maria) (Entered: 11/24/2003)
12/05/2003	<u>2</u>	SUMMONS Returned Executed Daniel O'Connell's Sons, Inc. served on 12/1/2003, answer due 12/22/2003. (Simeone, Maria) (Entered: 12/09/2003)

PACER Service Center			
Transaction Receipt			
01/20/2004 17:42:36			
PACER Login:	sg0627	Client Code:	Bartlett
Description:	Docket Report	Case Number:	1:03-cv-12349-PBS
Billable Pages:	1	Cost:	0.07